

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

ACL REALTY CORP.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 7:07-cv-00124
)	
.COM PROPERTIES, LLC,)	
)	
and)	
)	
.COM PROPERTIES II, LLC,)	
)	
Defendants.)	

ACL REALTY CORP.'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56 and 57, the Plaintiff, ACL Realty, Corp. ("ACL"), by counsel, moves this Court for Summary Judgment as to all claims contained in the Plaintiff's Complaint seeking declaratory relief in the above referenced case. In support of its Motion, ACL states that the undisputed facts demonstrate that the contract between the parties contains an unenforceable penalty provision, and there are no genuine issues of material fact that require a trial in this matter. Additionally, ACL relies upon its Memorandum of Law in Support of Its Motion for Summary Judgment filed contemporaneously herewith.

WHEREFORE, ACL respectfully requests that the Court grant Summary Judgment on its request for declaratory relief and enter an Order that the penalty provision in the contract is not enforceable as a matter of law and should be stricken from the contract, that ACL is released from further obligations under the contract, and that ACL be awarded its costs and attorneys' fees incurred herein pursuant to the contract, as well as any other relief the Court deems proper. In the alternative, and in the event the Court rules in favor of enforcing the penalty provision,

ACL respectfully requests that the Court toll the penalty provision during the pendency of this action in order to protect ACL from incurring substantial additional penalties in the form of a daily late fee of \$5,000.00 as set forth in that provision.

ACL REALTY CORP.

s/ Stephen G. Test

Stephen G. Test (VSB No. 18870)
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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Edward A. Natt, Esq., Osterhoudt, Prillaman, Natt, Helscher, Yost, Maxwell & Ferguson, P.O. Box 20487, Roanoke, Virginia 20487.

s/ Stephen G. Test

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